

HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD

[3418]

FRIDAY, THE SIXTH DAY OF SEPTEMBER
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE THE CHIEF JUSTICE ALOK ARADHE
AND
THE HONOURABLE SRI JUSTICE J SREENIVAS RAO

WRIT APPEAL NO: 208 OF 2012

Writ Appeal under clause 15 of the Letters Patent against the order in W.P. No. 14347 of 2002, dt. 22-07-2011. on the file of the High Court.

Between:

1. Union of India, Rep. by its Secretary Ministry of Defence, New Delhi.
2. The Director General of Defence, Estate Ministry of Defence, Government of India, New Delhi.
3. The Defence Estate Officer, A.P. Circle, Secunderabad Cantonment Board, Secunderabad.

...APPELLANTS/RESPONDENTS

AND

1. Smt Roshan Minoo Patel W/o. Minoo Sorabji Patel, R/o 1-10-156, Alexander Road, Secunderabad.
2. Sri Feroxe Behram Chenoy, S/o. Behram Sorabhi Chenoy, R/o. 1-10-156, Alexander Road, Secunderabad.
3. Sri Jahangir Behram Chenoy, S/o. Behram Sorabji Chenoy, R/o 1-10-156, Alexander Road, Secunderabad.
4. Sri Hamidullah Sharif,
5. Sri Fiazujjun Gori,
(R.R. 4 and 5 are proforma parties not necessary to the W.P.)

...RESPONDENTS/RESPONDENTS

I.A. NO: 1 OF 2012(WAMP. NO: 403 OF 2012)

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend the orders in W.P. No. 14347 of 2002 dt. 22-07-2011, pending the Writ Appeal.

Counsel for the Appellant: SRI. B. NARSIMHA SARMA

**ADDITONAL SOLICITOR GENERAL OF INDIDA
REP SRI T. SRUJAN KUMAR REDDY**

**Counsel for the Respondent Nos. 1to3: E. MADAN MOHAN RAO
SENIOR COUNSEL REP
SRI M. SRINIVAS**

**Counsel for the Respondent Nos. 4&5: --
The Court made the following: JUDGMENT**

**THE HON'BLE THE CHIEF JUSTICE ALOK ARADHE
AND
THE HON'BLE SRI JUSTICE J.SREENIVAS RAO**

WRIT APPEAL No.208 OF 2012

JUDGMENT: *(per the Hon'ble Sri Justice J.Sreenivas Rao)*

Heard Sri B.Narsimha Sarma, learned Additional Solicitor General of India representing Sri T.Srujan Kumar Feddy, learned counsel for the appellants and Sri E.Madam Mohan Rao, learned Senior Counsel representing Sri M.Srinivas, learned counsel for the respondent Nos.1 to 3.

2. The appellants have filed this writ appeal aggrieved by the orders passed by the learned Single Judge in W.P.No.14347 of 2002, dated 22.07.2011.

3. For the sake of convenience the parties herein will be referred to as they are arrayed in the impugned order dated 22.07.2011.

4. Brief facts of the case:

4.1 Bungalow No.176 in land admeasuring Acs.2 6224 bounded by a compound wall situated at Bowenpally, Secunderabad originally belonged to one Mirza Parvarish Ali who sold the said land in favour of B.D.Chenoy through registered sale deed dated 18.08.1905. After the death of B.D.Chenoy, his wife Smt. Avabai

Chenoy also died and the petitioners who are the children of B.D.Chenoy inherited the said property and the petitioners are in exclusive possession of the subject property and the Government never raised any objection in respect of the subject property and the petitioners have filed declaration before Urban Land Ceiling Authorities in the year 1976. Later on the Defense Estate Officer and Competent Authority (Urban Land Ceiling), Secunderabad Cantonment conducted enquiry and passed order determining that the petitioners are holding excess lands. Against the same, the petitioners preferred an appeal before the Director, Defense Estate (Lands) Southern Cantonment under Section 33 of the Urban Land Ceiling Act, 1976 ('ULC Act' for brevity) and the same was rejected. Aggrieved by the same, the petitioners filed W.P.No.5187 of 1982 and the said writ petition along with other batch cases were allowed and remitted back to the appellate authority.

4.2 In the meanwhile, Government acquired a part of the land of the petitioners, they paid compensation to the petitioners accepting and admitting their title to the property. The Government paid compensation only for the building and not for the land. At that stage, the petitioners along with other claimants sought reference under Section 14 of the Hyderabad Land

Acquisition Act (Hyderabad Act IX of 1309 Fasli) ('Act' for brevity) and the said reference came to be numbered as O.P. Nos.19, 39, 43, 45, 63, 64 and 65 of 1952. Learned Chief Judge, City Civil Court, Secunderabad allowed the said O.Ps by the common judgment dated 01.11.1961 holding that the acquired properties do not belong to the Cantonment but belonged to the claimants and they were entitled to compensation for acquisition of the lands and the said judgment has become final.

4.3 The petitioners further averred that respondent No.3 issued a notice *vide* proceedings No.21/188/EV.SY.NO.528/B.No.176 dated 17.07.1997 exercising the powers conferred under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 ('Act, 1971' for brevity) alleging that the petitioners are in unauthorized occupation of the premises and directed them to vacate the same. Aggrieved by the said proceedings, the petitioners filed C.M.A. No.172 of 1997 on the file of Chief Judge, City Civil Court, Hyderabad under Section 10 of the Act, 1971 and the said appeal was allowed by its judgment dated 31.01.2002 and respondent No.3 is directed to enquire into the matter in detail. Pursuant to the said judgment, the petitioners filed all necessary documents before respondent No.3 stating that the subject property is private property neither the Government nor

the Cantonment is having any right over the same and the title was already decided by the competent Civil Court in O.P.No.19 of 1952 and batch. The petitioners further averred that respondent No.3 without properly considering their contentions and documentary evidence produced by them passed the impugned order *vide* proceedings No.21/188/EV/SY. No.528/B.No.176, dated 30.05.2002 stating that the subject land comprising GLR Survey No.528, admeasuring Acs.2.8 guntas of Secunderabad Cantonment is public premises. Aggrieved by the same, petitioner filed W.P.No.14347 of 2002.

4.4 Learned Single Judge of the erstwhile High Court of Andhra Pradesh at Hyderabad after considering the contentions of the respective parties and after due verification of the records allowed the writ petition by its order dated 22.07.2011 and granted liberty to the respondents to establish their title or ownership over the property in appropriate proceedings before competent Civil Court and further granted liberty to respondents to proceed against the petitioners under the provisions of Act, 1971 for unauthorized occupation of the property subject to respondents obtaining declaration from appropriate Court as to their ownership of the scheduled property. Questioning the same, the respondents filed the present writ appeal.

Submissions of the learned counsel for the appellants:

5. Learned Solicitor General of India contended that subject property was recorded in the Revenue records and the General Land Register (GLR) as the defense property and the same is not private property. Learned Single Judge without considering the same passed the impugned order dated 22.07.2011. He further contended that the judgment passed in O.P.No.19 of 1952 and batch dated 01.11.1961 by the learned Chief Judge City Civil Court, Secunderabad pertaining to the payment of compensation in respect of acquired property and the same is not binding upon the respondents as they are not parties to the said O.P.

5.1. He further submits that respondent No.3 after following the due procedure as contemplated under the provisions of the Act, 1971 issued the show cause notice and after considering the explanation submitted by the petitioners passed eviction order on 30.05.2002. Against the said order, remedy of appeal is provided under Section 9 of the Act, 1971 and the petitioners without availing the statutory remedy of appeal, filed the writ petition and the same is not maintainable under law. He also contended that when the petitioners disputed the ownership and title of the respondents, they ought to have approached the competent Civil Court and established their title over the subject property.

5.2 He vehemently contended that learned Single Judge without properly considering the contentions of the respondents allowed the writ petition holding that respondent No.3 initiated the proceedings under provisions of the Act, 1971 which are summary in nature, when there is *bona fide* dispute regarding the title of the subject property, the summary proceedings initiated under the Act, is not permissible and unless and until the respondents establish their title over the subject property through competent Civil Court, respondent No.3 is not entitled to initiate the proceedings under the Act, 1971. Learned Single Judge instead of directing the petitioners to approach the competent Civil Court to establish their title over the subject property, granted liberty to the respondents to approach competent Civil Court to establish their title and the same is contrary to law.

Submissions of learned counsel for the Respondent Nos.1 to 3/writ petitioners:

6. *Per contra*, learned Senior Counsel submits that the subject property is not Government or Defence property. The petitioners' father had purchased the same through registered sale deed dated 18.08.1905 after paying valuable sale consideration and since then he had been in possession and enjoyment of the same with absolute rights. Government acquired the said property along

with other properties for public purpose by invoking the provisions of the Act and paid compensation only for the building and not for the land. At that stage, the petitioners and similarly situated persons have sought reference under Section 14 of the Act and the reference Court i.e., learned Chief Judge, City Civil Court, Secunderabad allowed the O.P.s by its judgment dated 01.11.1961 specifically holding that the subject property is not a Government or Cantonment property and claimants are entitled to compensation in respect of land and the said judgment has become final.

6.1. He further contended that respondent No.3 issued the notice dated 17.07.1997 alleging that the petitioners are in unauthorized occupation of the subject property which belonged to them, simply relying on the wrong entries made in GLR (General Land Register). Questioning the same, petitioners filed C.M.A.No.172 of 1997 and the said appeal was allowed on 31.01.2002 and the matter was remitted back to respondent No.3. The petitioners have filed objections before respondent No.3 by enclosing all the documents including judgment passed in O.P.No.19 of 1952 and batch dated 01.11.1961. Respondent No.3 without properly considering the same, passed the impugned order dated 30.05.2002.

6.2. He also contended that learned Single Judge after considering the contentions of the respective parties, allowed the writ petition by giving cogent findings that respondent No.3 without establishing their title over the subject property initiated the proceedings and passed the impugned order and the same is not permissible under law and granted liberty to the respondents to approach the competent Civil Court to establish their title and to initiate the proceedings under the Act, 1971 after obtaining a declaration from the competent Civil Court and the order passed by learned Single Judge is in accordance with law.

6.3 In support of his contention, he relied upon the judgments of *State of Rajasthan Vs. Padmavati Devi and others*¹ and *Estate Officer and A.P.D., Airports Authority of India Vs. Smt. T.Satya Suguna Devi (W.A.Nos.1052, 1053, 1054, 1055 and 1056 of 2010)* of this Court.

Analysis of the case:

7. Having considered the rival submissions made by respective parties and after perusal of the material available on record, it reveals that the petitioners are claiming the rights over the property through registered sale deed dated 18.08.1905 and the same was purchased by their father B.D.Chenoy from Mirza

¹ 1995 Supp (2) SCC 290

Parvarish Ali. After his death the petitioners who are sons and daughters of B.D.Chenoy succeeded the said property. The Government initiated the land acquisition proceedings under the provisions of the Act and acquired petitioners' property along with others for expansion of the Begumpet Aerodrome by giving compensation for the buildings alone and declined to give compensation for the land acquired on the ground that the land belonged to the British Military Authority, as it formed part of the Cantonment area of Secunderabad and therefore it was a Cantonment tenure and the lessees or the licensees who put up the buildings did not acquire any title to the property and therefore the compensation given for the buildings and appurtenances situated therein is proper and no compensation in respect of the land can be claimed by the petitioners and others.

8. Aggrieved by the same, the petitioners as well as other similarly situated persons have made applications under Section 14 of the Act seeking reference for enhancement of compensation for the building and also claiming compensation for the acquired land and the said applications were numbered as O.P. Nos. 19, 39, 43, 45, 63, 64 and 65 of 1952. Learned Chief Judge, City Civil Court, Secunderabad allowed the said O.Ps by the common judgment dated 01.11.1961 holding that the acquired properties

do not belong to the Government or the Cantonment but belonged to the claimants and they were entitled to compensation for acquisition of the lands as well and passed award holding that the petitioners are entitled for enhancement of compensation for the building and also compensation for the land @ 12/- (O.S.) for 8407 square yards with 6% interest from the date of possession and the said award has become final.

9. While things stood thus, respondent No.3 issued notice on 17.07.1997 exercising the powers conferred under the Act, 1971 alleging that the subject property belong to respondents and the petitioners are in unauthorized occupation and directed them to vacate the same. Questioning the same, the petitioners filed CMA No.172 of 1997 on the file of Chief Judge, City Civil Court, Hyderabad and the said appeal was allowed on 31.01.2002 and directed respondent No.3 to pass orders afresh after considering the documents. Pursuant to the said judgment, the petitioners have approached respondent No.3 and submitted all documents including judgment passed in O.P.No.19 of 1952 and batch dated 01.11.1961 stating that the said property is private property and do not belong to the Government nor respondents, without considering the same, respondent No.3 passed order on 30.05.2002, holding that the subject property belonged to the

respondents and the petitioners are in unauthorized occupation and they are liable for eviction. Aggrieved by the same, petitioners filed W.P.No.14347 of 2002 and the learned Single Judge after considering the contentions of respective parties framed three issues which reads as follows:

Issue No.1: Whether the judgment dated 1-11-1961 of the learned Chief Judge, City Civil Court Secunderabad in OP.19/1952 and batch and the judgment of the learned Division Bench of this Court in Vasavi Cooperative Housing Society and the findings recorded in these decisions (that title to the 13 Moglai villages [including Thokatta] are not vested in the Union of India or the Secunderabad Cantonment), constitute res judicata, a judgment in rem or issue estoppel;

Issue No.2: Whether proceedings under the 1971 Act are precluded; in view of the bona fide and serious claim by the petitioners, of title to the schedule property and the summary procedure provided for determination, under the 1971 Act?

Issue No.3: Whether in view of the available alternative remedy, of appeal under section 9 of the 1971 Act against the [impugned order], the Writ Petition is maintainable? And if so, what appropriate relief could be granted?

10. Learned Single Judge after due verification of the records and also considering the judgments of Hon'ble Apex Court as well as this Court allowed the writ petition by giving reasons in respect of each issue holding that the petitioners are claiming rights through registered sale deed dated 18.08.1905 and their title and possession was confirmed by the learned Chief Judge, City Civil Court, Secunderabad by the common judgment dated 01.11.1961

in O.P.No.19 of 1952 and batch and awarded compensation in favour of the petitioners, whereas the respondents are disputing the title of the petitioners and claiming that they are the owners of the properties and initiated summary proceedings under the Act, 1971 and passed the impugned order. Unless the respondents establish their title by approaching competent Civil Court and obtain a decree, they are not entitled to initiate the proceedings under the Act, 1971. Respondent No.3 is not having jurisdiction to decide the title over the property in summary proceedings especially when there is a *bona fide* dispute regarding the title of the respondents.

11. Learned Single Judge further held that the alternative remedy of appeal is not bar to file the writ petition invoking Article 226 of the Constitution of the India when the order passed by the authority is without jurisdiction and also further held that judgment passed in O.P.No.19 of 1952 and batch dated 01.11.1961 operates as *res judicata*.

12. The contention of the learned Senior Counsel appearing for the respondents that the judgment passed in O.P.No.19 of 1952 and batch is not binding upon them as they are not parties in the said O.P and the said property belong to the respondents and the same was recorded in GLR Records and without considering the

crucial document, learned Single Judge allowed the writ petition, is not tenable under law, on the ground that basing on the GLR Record, whether the respondents are entitled to claim title over the property and whether the findings given in O.P.No.19 of 1952 and batch is binding upon the respondents, whether the said property belongs to the respondents or Government or petitioners are disputed questions of facts and the same cannot be adjudicated in the writ petition. Similarly, respondent No.3 is disputing the title of the petitioners over the subject property, unless and until the respondents approach the competent Civil Court and obtain decree, respondent No.3 is not entitled to initiate the proceedings under Act, 1971 which are summary in nature.

13. It is very much relevant to mention here that in ***Government of Andhra Pradesh Vs. Thummala Krishna Rao and another and batch***² the Hon'ble Apex Court specifically held that summary remedy for eviction which is provided under Section 6 of the Land Encroachment Act, 1905 can be resorted to by the Government only against the persons who are in unauthorized occupation of any land which is "the property of Government". If there is a *bona fide* dispute regarding the title of

² AIR 1982 SC 1081

the Government to any property, the Government cannot take a unilateral decision in its own favour that the property belongs to it, and on the basis of such decision take recourse to the summary remedy provided by Section 6 for evicting the person who is in possession of the property under a *bona fide* claim or title. The summary remedy prescribed by Section 6 is not the kind of legal process which is suited to adjudication of complicated questions of title.

14. It is relevant to place on record that in ***The Special Deputy Collector, Land Eviction Hyderabad Vs. Konda Lakshman Bapuji***³ the erstwhile High Court of Andhra Pradesh held that if the Government was keen on summarily evicting the writ petitioners they should have taken proceeding within a reasonable time after the writ petitioners or their lessor had encroached upon the land. This occupation of the property by the writ petitioners being open and for an appreciable length of time, can be taken, *prima facie*, to have a *bona fide* claim to the property requiring an impartial adjudication according to the established procedure of law. Since there is *bona fide* dispute of title between the Government and the petitioners, it must be adjudicated upon by the ordinary Courts of law. This Government cannot decide such

³ 1984 (1) APLJ 10

questions unilaterally in its own favour and evict them summarily on the basis of such decision.

15. In the case on hand, the petitioners are claiming title and possession over the subject property through registered sale deed dated 18.08.1905 and the said property is acquired by the Government for the public purpose and paid compensation in respect of buildings and denied the claim of the petitioners in respect of land. The Reference Court allowed the C.P.No.19 of 1952 and batch on 01.11.1961 and awarded compensation in respect of the land. Unless the respondents establish their title through competent Civil Court, respondent No.3 is not entitled to initiate and pass the eviction order exercising the powers conferred under the Act which are summary in nature and the same is without jurisdiction.

16. In subsequent judgment in **State of Rajasthan**: (supra) the Hon'ble Apex Court held that summary procedure for eviction of unauthorized occupants of Government Land cannot be invoked where person in occupation raises *bona fide* dispute involving complicated questions of title and his right to remain in possession of the land.

17. In W.A.Nos.1052, 1053, 1054, 1055 and 1056 of 2010, also estate officer exercising the provisions of the Act passed eviction

order and the learned Single Judge of this Court allowed the writ petition holding that the appellant authorities are not having jurisdiction to pass eviction order under the provisions of the Act and the said proceedings are summary in nature. When complicated questions of title and possession are involved the proceedings initiated against the petitioners under the provisions of the Act are illegal and the said order was confirmed by the Division Bench of this Court while dismissing the writ appeals.

18. It is already stated supra that the writ petitioners and the respondents are claiming title over the property. When there is complicated question of fact of title and possession involved, proceedings initiated by the respondent No.3 under the Act is not permissible under law. Hence, this Court is of the considered view that the learned Single Judge has rightly allowed the writ petition and set aside the impugned order and granted liberty to the respondents to approach the competent Civil Court to establish their title over the subject property and also further granted liberty to the respondents to initiate proceedings under the Act, 1971 for unauthorized occupation of the property after obtaining declaration from appropriate court as to the their ownership of the subject property.

19. For the foregoing reasons, as well as the principle laid down in the plethora of judgments, this Court does not find any reason to interfere with the impugned order passed by the learned Single Judge.

20. Accordingly, the Writ Appeal is dismissed. No costs.

Miscellaneous petitions pending, if any, shall stand closed.

SD/-T. KRISHNA KUMAR
DEPUTY REGISTRAR
SECTION OFFICER

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(For His Lordships Kind Perusal)

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B M
BS

HIGH COURT

DATED:06/09/2024



JUDGMENT

WA.No.208 of 2012

DISMISSING THE WRIT APPEAL WITHOUT COSTS

(21) VLV
19/9/24